

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

2018 DEC 26 AM 11:05

CLERK J. Hodge
SO. DIST. OF GA.

UNITED STATES OF AMERICA

v.

DERRIAN R. BROWN

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CR 112-044

O R D E R

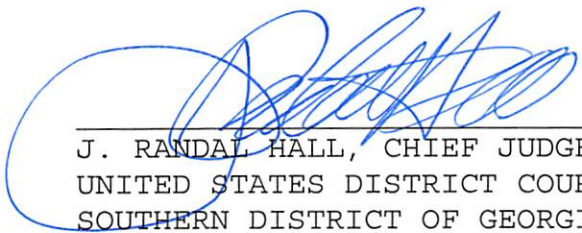
Defendant Derrian R. Brown was sentenced by this Court on October 22, 2012. Citing Federal Rule of Civil Procedure 60(b), Defendant has filed a cursory motion, which seeks "an order to clarify some chaos, mis-computation of [his] sentence."

First, the Federal Rules of Civil Procedure have no application to criminal cases. E.g., United States v. Mosavi, 138 F.3d 1365, 1366 (11th Cir. 1998) ("Rule 60(b) simply does not provide for relief from judgment in a criminal case . . ."). Second, with only three exceptions in 18 U.S.C. § 3582(c), a district court may not modify a sentence once it has been imposed. See United States v. Phillips, 597 F.3d 1190, 1194-95 (11th Cir. 2010). Under the first exception, a court may entertain a motion filed by the Director of the Bureau of Prisons under certain circumstances. 18 U.S.C. § 3582(c)(1)(A). The second exception references Rule 35 of the Federal Rules of Criminal Procedure for

instances when correcting sentence is proper. 18 U.S.C. § 3882(c)(1)(B). Rule 35 allows modification upon an order from an appellate court, upon a motion from the Government, or to correct a computational error within seven days of sentencing. Finally, under the third exception a court may reduce a sentence that was "based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 944(o)." 18 U.S.C. § 3582(c)(2). Defendant has not asserted that he is entitled to relief under any of these three exceptions. Finally, to the extent that Defendant wishes to challenge the legality of his sentence, he must file a motion pursuant to 28 U.S.C. § 2255. See Antonelli v. Warden, U.S.P. Atlanta, 542 F.3d 1348, 1352 n.1 (11th Cir. 2008).

Upon the foregoing, Defendant's Rule 60(b) motion (doc. 31) is hereby DENIED.

ORDER ENTERED at Augusta, Georgia, this 26th day of December, 2018.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA